

**27123**

**CUSTOMER  
NUMBER**

Docket No. 2976-4055US2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant(s)    Barbara J. Winslow, et al.                      Confirmation No.:    7815

Serial No.:      09/303,040    Group Art Unit:      1648

Filed:            April 30, 1999    Examiner:            Sharon HURT

For:              RECOMBINANT VIRUS EXPRESSING FOREIGN DNA ENCODING FELINE  
CD86 AND USES THEREOF  
(formerly RECOMBINANT VIRUS EXPRESSING FOREIGN DNA ENCODING  
FELINE CD80, FELINE CD28, FELINE CTLA-4 OR FELINE INTERFERON- $\gamma$   
AND USES THEREOF)

**STATEMENT OF BIOLOGICAL CULTURE DEPOSIT**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

I hereby declare that:

I am a representative of Schering-Plough Animal Health Corporation having an address at 556 Morris Avenue, Summit, NJ 07901, co-assignee of the subject matter described and claimed in the above-identified patent application, hereby states as follows:

1.        The following recombinant viruses referred to in the specification of this application have been deposited:

Recombinant Virus

Accession Number

Recombinant swinepox virus derived from Kaska strain S-SPV-246

VR-2603

Recombinant feline herpesvirus derived from NVSL strain S-FHV-031

VR-2604

2. The date of the above deposits of ATCC Designation Nos. VR-2603 and VR-2604 is May 1, 1998.

3. The name and address of the depository was formerly:

American Type Culture Collection (ATCC)  
10801 University Boulevard  
Manassas, VA 20110-2209 USA

4. The name and address of the depository is currently:

American Type Culture Collection  
P.O. Box 1549  
Manassas, VA 20108 USA

5. A statement that the cultures deposited with the above-named depository (ATCC) are viable is attached as Exhibit 1. This statement is executed by a representative of the depository.

6. With respect to the permanence of the culture deposit, the depository is an official depository, in accordance with the Budapest Treaty for the above-deposited culture. Evidence that permanent availability of the culture is assured is provided in the form of the attached copies of the contract with the above-mentioned depository with respect to the deposited culture.

7. Should the culture become non-viable or be inadvertently destroyed, applicant will replace such culture for at least 30 years from the date of the original deposit, or at least 5 years from the date of the most recent request for release of a sample, or for the life of any patent issued on the above-mentioned patent application, whichever period is longer.

8. With respect to availability of the culture, the deposit has been made under conditions of assurance of (a) ready accessibility thereto by the public if a patent is granted,

whereby all restrictions to the availability to the public of the culture so deposited will be irrevocably removed upon the granting of the patent (M.P.E.P. §608.01(p)); and (b) access to the culture will be available during pendency of the patent application to one determined by the Commissioner to be entitled thereto under 37 C.F.R. §1.14 and 35 U.S.C. §122. Evidence of the accessibility of the culture as set forth above is provided in the form of the attached copy of the contract with the above-mentioned depository with respect to the deposited culture.

9. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Name:

Title:

Representative of Schering-Plough Animal Health Corporation

# ATCC

10801 University Blvd • Manassas, VA 20110-2209 • Telephone: 703-365-2700 • FAX: 703-

## BUDAPEST TREATY ON THE INTERNATIONAL RECOGNITION OF THE DEPOSIT OF MICROORGANISMS FOR THE PURPOSES OF PATENT PROCEDURE

### INTERNATIONAL FORM

#### RECEIPT IN THE CASE OF AN ORIGINAL DEPOSIT ISSUED PURSUANT TO RULE 7.3 AND VIABILITY STATEMENT ISSUED PURSUANT TO RULE 10.2

To: (Name and Address of Depositor or Attorney)

Cooper & Dunham LLP  
Attn: John P. White, Esq.  
1185 Avenue of the Americas  
New York, NY 10036

Deposited on Behalf of: Schering-Plough Animal Health (Ref. Docket 54957)

Identification Reference by Depositor:

ATCC Designation

Recombinant swinepox virus derived from Kaska strain S-SPV-246	VR-2603
Recombinant feline herpesvirus derived from NVSL strain S-FHV-031	VR-2604

The deposits were accompanied by:      a scientific description      a proposed taxonomic description indicated above. The deposits were received May 1, 1998 by this International Depository Authority and have been accepted.

AT YOUR REQUEST: X We will inform you of requests for the strains for 30 years.

The strains will be made available if a patent office signatory to the Budapest Treaty certifies one's right to receive, or if a U.S. Patent is issued citing the strains, and ATCC is instructed by the United States Patent & Trademark Office or the depositor to release said strains.

If the cultures should die or be destroyed during the effective term of the deposit, it shall be your responsibility to replace them with living cultures of the same.

The strains will be maintained for a period of at least 30 years from date of deposit, or five years after the most recent request for a sample, whichever is longer. The United States and many other countries are signatory to the Budapest Treaty.

The viability of the cultures cited above was tested August 5, 1998. On that date, the cultures were viable.

International Depository Authority: American Type Culture Collection, Manassas, VA 20110-2209 USA.

Signature of person having authority to represent ATCC:

Barbara M. Hailey  
Barbara M. Hailey, Administrator, Patent Depository

Date: August 7, 1998

cc: Bob Alderson